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December 1, 2023

File No. 37986.7346

**VIA ECF**

The Honorable Lois Bloom  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
New York, New York 11201

Re: *Kauser v. MHF 5th Ave., LLC, et al.*  
Case No.: 1:22-cv-05121 (RPK)(LB)

Dear Judge Bloom:

We represent Defendants in the above-referenced matter. We write in response to Plaintiffs' reply in further support of their Motion to Compel Defendants' responses to Plaintiffs' First Set of Interrogatories and First Request for Production of Documents, filed on November 28, 2023 ("Letter"). (Doc. No. 37). Cognizant of the Court's clear prohibition on replies for letter motions as stated in Section 5.A of the Court's Individual Practices, which Plaintiffs have completely disregarded here, we write to respectfully request that the Court deny Plaintiffs' motion because Plaintiffs have not met and conferred with Defendants about the alleged discovery issues raised in Plaintiffs' letter. Plaintiffs' request is premature because Plaintiffs have once again ignored their obligation to meet and confer in good faith pursuant to Rule 37(a)(1) of the Federal Rules of Civil Procedure, Local Rule 37.3(a) of the Eastern District of New York, and Section 5.A. of the Court's Individual Practices before rushing to involve the Court.

On November 28, 2023 at 10:12 a.m., Plaintiffs emailed Defendants raising certain discovery deficiencies in Defendants' responses to Plaintiffs' First Set of Interrogatories and First Request for Production. At 11:00 a.m., Defendants commenced the deposition of Plaintiff Okolie, which was scheduled for that day. At the end of the deposition, while still on the record, Plaintiffs' counsel

The Honorable Lois Bloom  
December 1, 2023  
Page 2

insisted on discussing the substance of his email and demanded that Defendants provide a date certain as to when they would revise their discovery responses and supplement their production. When Defendants' counsel asked for time to review the correspondence on the basis that it was sent immediately before the deposition and because Defendants' counsel did not have an opportunity to confer with their client since receipt of the correspondence that morning, Plaintiffs continued to insist that Defendants commit to revising and supplementing their discovery responses. Defendants declined Plaintiffs' unreasonable request to continue discussions and offered to meet and confer after Defendants had the opportunity to review Plaintiffs' email and confer with their client. Plaintiffs then filed the Letter that afternoon without any further discussions with Defendants. Without a proper opportunity to meet and confer about the alleged discovery deficiencies or allowing Defendants to substantively respond to the deficiencies raised, Plaintiffs cannot claim that Defendants are not complying with their discovery obligations. Not only is Plaintiffs' Letter an impermissible reply to a letter motion under the Court's Individual Practices, it is also a premature and unfounded second motion to compel where the parties have not attempted to resolve the discovery issues amongst themselves.

The Court should deny Plaintiffs' Letter and direct Plaintiffs to meet and confer with Defendants before engaging in any further needless motion practice.

We thank the Court for its attention to this matter.

Respectfully,

/s/ Adam E. Collyer

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SMITH LLP

cc: **All Counsel of Record**